THE HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.20448 of 2007

Date: 07.12.2007

Between:

Yelamanchili Sambasiva Rao

... PETITIONER

AND

The Government of A.P.,
Department of Mines and Geology, rep., by its
Secretary, Secretariat Buildings, Hyderabad
& others.

... RESPONDENTS

THE HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.20448 of 2007

ORDER:-

This Court issued Rule Nisi on 27.09.2007. In WPMP.No.26442 of 2007 this Court made the following order:

> "Any auction conducted would be subject to the orders made in the writ petition."

2. Heard Sri C.V.R. Rudraprasad, learned counsel representing the writ petitioner, learned Assistant Government Pleader for Mines and Geology and N. Shoba, learned counsel representing the respondents.

3. The implead application No.27878 of 2007 was filed and respondent No.5 was impleaded as a party by order dated 11.10.2007. Respondent Nos.4 and 5 filed WVMP.No.3033 of 2007 to vacate the interim order.

4. Sri C.V.R. Rudraprasad, learned counsel representing the petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and would maintain that in the facts and circumstances of the case and even in the interest of public exchequer, the writ petition to be allowed. Learned counsel also placed strong reliance on certain rules in this regard.

5. Learned Assistant Government Pleader for Industries and

Commerce had taken this Court through the contents of the counter-affidavit and would maintain that the writ petition is liable to be dismissed.

6. Smt. N. Shoba, learned counsel representing the 5th respondent in the writ petition had taken this Court through the contents of the counter-affidavit and would maintain that in the facts and circumstances of the case the writ petition is being devoid of merit and the same is liable to be dismissed.

7. The writ petition is filed for a writ of mandamus to declare the action of the respondents more particularly respondent Nos.2 to 4 in seeking to conduct auction for grant of leasehold rights to quarry sand from the Lankapalli Sand Reach, Pamidimukkala Mandal, Krishna District, pursuant to the notification No.644/Q/2007 dated 12.09.2007 published in Eenadu Telugu Daily on 13.09.2007, without furnishing the requisite information and details sought by the petitioner through his representation dated 13.09.2007, as arbitrary, illegal, colourable exercise of power, non-application of mind to the relevant issues, application of mind to the irrelevant issues, violative of the provisions of WALTA Act, River Conservancy Act, Gram Panchayat Act and the A.P. Minor Mineral Concession Rules, 1966 as amended from time to time, apart from being violative of the decisions of this Court in respect of grant of leasehold rights to quarry sand, violative of the Fundamental Rights guaranteed under Aritcles 14, 19(1)(g) of the Constitution of India and consequently direct the respondents not to conduct auctions in respect of Lankapalli Sand Reach until all legal doubts raised by the petitioner are clarified on ground and pass such other suitable orders.

8. It is stated that the 3rd respondent issued Form-S1 under Rule 9-D of the A.P. Minor Mineral Concession Rules, 1966, hereinafter referred to as the Rules for the purpose of convenience, inviting applications to conduct public auction by way of sealed tenders for grant of leasehold rights to quarry sand from Krishna and Munneru Rivers of Krishna District and the said advertisement dated 12.09.2007 was published in the Eenadu Telugu daily on 13.09.2007.

9. It is also stated that as per the said advertisement, the 3rd respondent offered to grant leasehold rights of the quarries mentioned therein for the period from 01.10.2007 to 31.03.2009. It is also stated that for the time being the lease will be till 31.03.2008 and thereafter, it will continue for the subsequent year i.e., till 31.03.2009 on payment of 20% over and above the highest bid amount. Further, it is stated therein that the applications to enable the bidders to participate in the auction, obtaining hall tickets can be received from the officer of the 3rd respondent before 27.09.2007 5 p.m. It is also stated that the petitioner is concerned with the Lankapalli Sand Reach at Sl.No.2 of the schedule, which comes under the purview of the 3rd respondent. The area of operation is fixed as Lankapalli Gram Panchayat limits and the upset price is fixed at Rs.22,68,000/-. The auction is scheduled to be held on 29.09.2007 at 11 a.m. in the meeting hall of the Sub-Collector, Vijayawada. Immediately, on knowing about the auction notification, the petitioner had drawn a demand draft dated 13.09.2007 in the name of the 3rd respondent for a sum of Rs.1,000/- for purchase of application and submitted a representation on the same day along with the said demand draft seeking certain information.

10. Further, it is stated that the petitioner requested the 3rd respondent to furnish a copy of the report submitted by the Groundwater Department, the sketch showing the area amenable for lifting of sand from the Lankapalli Sand Reach along with its boundaries and also requested him to furnish details of ramp point of the reach as fixed by the competent authority from Irrigation Department in order to avoid any future complications in view of the fact that earlier in some cases after conducting auction and grant of leasehold rights in favour of the highest bidder, the same was stopped at the behest of third parties on the ground that the groundwater report and its recommendations are not submitted by the 4th respondent. Further, under the Water, Land and Trees Act and the Rules made thereunder, it is the duty of the competent authority to conduct survey and submit report to the Director, Groundwater Department along with its recommendations. Based on such recommendations, the said authority will give clearance to the 2nd and 3rd respondents either to conduct auction for grant of leasehold rights or not to do so. In the case on hand, no such information is furnished by the 3rd respondent though more than 10 days have lapsed from the date of notification and the auction is scheduled to be held on 29.09.2007.

11. Further, it is stated that it is also the duty of the 2nd and 3rd respondents to furnish details of the ramp point and availability of the existing ramp to enable the bidder/contractor to transport sand through vehicles from the riverbed, as the subject matter of the reach is not notified for lifting sand through means of boats and when such a reach is notified, it is incumbent on the respondents to furnish details of the availability of ramp point, whereas in the

present case, when the petitioner verified the reach, no ramp is visible due to heavy floods and the petitioner is unable to assess the availability of sand within the reach due to flood season. It is pertinent to point out here that even the respondents are not aware as to where the ramp is situated and what is the quantity of sand available in the reach, as they are also unable to physically identify the boundaries of the reach.

12. Further it is stated that when the petitioner inspected the area, it was pointed out by some of the village ryots that they have patta lands within the reach area sought to be leased out and they will not allow the highest bidder/lessee to conduct quarry operations in their lands though they are coming within the purview of the reach sought to be leased out. The 3rd respondent had mentioned in the notification that the sand area is within the Gram Panchayat limits and there is no boundary fixed for the Gram Panchayat on River Krishna, as a result, not only the ryots, who are holding patta lands within the reach limits, but also the ryots from the neighbouring Gram Panchayat are coming forward disputing the boundaries resulting in multiplicity of litigation. It is relevant to submit that before fixing the boundaries, the respondents did not consult the Gram Panchayat as a result, they are threatening to stop the bidder from entering the leased area. If the petitioner becomes the highest bidder, he will not be able to conduct quarry operations at all. Whereas the respondents will receive the highest bid amount and they will not come forward with the details of the boundaries, notified ramp point as fixed by the Executive Engineer, Krishna Division and the area from where the sand had to be listed. The petitioner cannot fight with the village ryots and the neighbouring Gram Panchayats, as he required to conduct business while maintaining cordial relations with all of

them, otherwise he will suffer huge financial and irreparable loss.

13. It is further stated that the petitioner understood and believed the same to be true as the aforesaid information is not available. The respondents are unable to furnish the same in spite of his repeated requests made to them. Due to lack of coordination between the Irrigation, Groundwater, Mines and Panchayatraj Departments, they are not in a position to disclose the crucial information, which is the basis for holding auctions and grant of leasehold rights. It is incumbent on the respondents to furnish the aforesaid information as required by the petitioner or else, the whole process of auction vitiates, as the same is contrary to Rules. In fact, this Court was pleased to consider the effect of non-consideration of the reports being submitted by the Groundwater Department and framed guidelines for conducting auction and sand mining in WP.No.18359 of 2002, vide order dated 16.02.2004. In spite of there being an order from this Court, the respondents plead ignorance and act as per their whims and fancies. If the respondents would have strictly followed the provisions of the WALTA Act, River Conservancy Act, Gram Panchayat Act and the Rules, they would have been in a position to furnish the details sought by the petitioner. But due to non-compliance with the procedure contemplated under the aforesaid Acts, the whole process must be declared as arbitrary, illegal, colourable exercise of power, non-application of mind to the relevant issues, application of mind to the irrelevant issues, violative of the provisions of WALTA Act, River Conservancy Act, Gram Panchayat Act and the Rules as amended from time to time, apart from being violative of the decisions of this Court in respect of grant of leasehold rights to quarry sand, violative of the Fundamental Rights guaranteed under Aritcles 14, 19(1)(g) of the

Constitution of India.

14. Further it is stated that in identical cases, when the authorities are conducting auctions, they have furnished the details of ramp point, reach area in kilometers and the area notified for lifting the sand in the notification itself and the ramp area is not notified except stating the Gram Panchayat limits and on that ground alone, the impugned notification insofar as Lankapalli Sand Reach, is liable to be set aside. As per the Rules, once the auction is held and if a person is declared as the highest bidder, he must compulsorily pay 25% of the highest bid amount within 24 hours. At the relevant point of time, even if the bidder requests the respondents to furnish the details sought earlier, they will force him to pay the entire bid amount or else he will be threatened with forfeiture of the EMD. In such a situation, the bidder will have no option except to accede to the pressure tactics being played by the authorities. The representatives of the State are expected to act in a fair manner within the realm of Article 14 of the Constitution of India. More so, they are not expected to act like a seasoned businessmen in view of the fact that they are duty bound to comply with the provisions of several laws and then only give preference for revenue to the State exchequer. Whereas in this case, the respondents, having ignored all the provisions, are proceeding to conduct auctions with a sole motto to earn money giving a goby to the well established principles of law. If they succeed in their attempts and finalize the auctions contrary to the rule position, the ultimate sufferers will be the highest bidders and the participants in the auctions like the petitioner, who are bonafidely ready and willing to pay revenue to the State. In view of what is stated above, unless this Court is pleased to stay the impugned notification insofar as Lankapalli Sand Reach is

concerned, till the respondents furnish the information sought by the petitioner in accordance with the Rules, he will suffer grave and irreparable loss, which cannot be compensated. In such circumstances the petitioner approached this Court praying for appropriate relief as specified supra.

15. In the counter-affidavit filed by respondent Nos.1 to 4, which was sworn to by respondent No.3 in reply to para 3 it is stated that it is a fact that this office had issued an auction notification vide notice No.644/Q/2007, dated 12.09.2007 scheduled to conduct the auction for sale of right of sand quarrying in respect of Lankapalli Sand Reach for the period from 01.10.2007 to 31.03.2008 and it will be continued for subsequent year till 31.03.2009 on payment of 20% excess on proportionate for one year amount. The petitioner had paid an amount of Rs.1000/- as application fee in the shape of demand draft as per rules, and filed an application and he was issued Hall Ticket to participate in the auction accordingly.

16. In reply to para 4, it is stated that the petitioner had obtained an application duly submitting a demand draft worth Rs.1000/- as per rules. While furnishing the application to the petitioner, this office had also furnished the conditions of auction along with ramp points. Regarding the feasibility report given by Groundwater Department, it is the information to the District Level Sand Committee, to decide whether the area can be put for auction in view of the Ground Water Level. There is no necessity of furnishing the information to the applicant unless a specific request is made under the relevant rules by paying the requisite fee. After verifying all these facts the petitioner filed a sealed tender for an amount of Rs.36,00,999/- which indicates the non-furnishing of allegation of the petitioner is far from the truth, and

the petitioner had complete knowledge of the ramp points, the availability of sand, the ground water recommendations etc.,

17. Further, while replying to para 5, it is stated that this office had furnished all conditions of the auction along with ramp point and hence the contentions of the petitioner are not correct. Further it is submitted that before notifying the area a team of officers of Mines and Geology, Ground Water, along with the Mandal Surveys Revenue Department and Surveyor of Office of the Assistant Director of Mines and Geology have inspected and surveyed the area and assessed the area, local demand of sand consumption, and fixed minimum bid amount. Hence, the allegations of the petitioner regarding the awareness of the respondents for ramp point, quantity of sand available in the reach, and physical identification of the boundaries of the reach are not at all correct.

18. It is further also stated that the petitioner had participated in the auction. The petitioner should had been brought to notice of the Joint Collector, Chairman of the District Level Sand Committee and auctioning authority, regarding the objections of the ryots and their patta lands, but he maintained silence in the auction hall and participated in the auction without any such objections, further the present successful bidder had not expressed any such objections said to have been raised by ryots or problems in the area even today. The sand had to be lifted in the reach from the ramp point at K.M. 34.650 of K.M. left bank as per the clearance given by the Executive Engineer, Krishna Central Division, Vijayawada.

19. It is also further stated that the entire information had been furnished to one and all the participants and accordingly among other participants Sri K. Poornachandra Rao, had offered highest

bid amount of Rs.73,09,999/-. For reach Lankapalli 22 persons have applied and participated in the auction. Out of 22 participants in the auction only 18 sealed tenders have been received for Lankapalli reach. Out of 18 sealed tenders the petitioner Sri Y. Sambasiva Rao, had offered an amount of Rs.36,00,999/- through sealed tender. The petitioner with a view to litigate the auction of sand quarry, filed this writ petition with unclean hands. The successful bidder, who offered Rs.73,09,999/- had not raised any such objection in any manner and paid 25% of the Knocked down amount and accordingly the reach of Lankapalli was confirmed in favour of Sri K.Poornachandra Rao, vide Proceedings No.3755/Q1/2007 dated 04.10.2007 of the District Collector, which indicates that the allegations of the petitioner are far from truth, only to stop the auction and to cause loss to the exchequer.

20. Further it is stated that this office had notified the area of Lankapalli Gram Panchayat, which is free and available for auction, and auctioned for the period up to 31.03.2008 only. The petitioner had also submitted a sealed tender and also participated in the auction which indicates that the petitioner had complete knowledge of everything regarding the Lankapalli Sand reach and hence the contentions of the petitioner are far from the truth. In such circumstances it is stated that the writ petition is not maintainable and the petitioner is not having any right in the prevailing conditions and rules, as he is not the 2nd or 3rd highest bidder and hence the writ petition be dismissed.

21. In the affidavit filed in support of the implead application, several facts have been narrated by the 5th respondent as well they are just akin to the stand taken by respondent Nos.1 to 4.

22. In the light of the facts and specific stand taken by

respondent Nos.1 to 4 in the counter-affidavit, having been un-successful, the writ petitioner cannot approach this Court praying for such relief.

23. The writ petition is not a bona fide one and accordingly the same shall stand dismissed. No costs.

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P.S. NARAYANA, J

Date: 07.12.2007
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